

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 272 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 & 2 :Yes 3 to 5: No
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MAHENDRABHAI KALIDAS Vs. GOPALJI SURSANGJI

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Appearance:

MR AJ PATEL for Petitioners

MR JC VYAS for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 3

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 03/03/98

ORAL JUDGEMENT

1. The petitioners are aggrieved by the orders declaring the registered sale deed dated 11.10.1993 as cancelled on the ground that it is a sale in breach of the provisions of Prevention of Fragmentation and Consolidation of Holdings Act.

2. It is submitted that for this purpose, a show cause notice came to be issued on 20th February 1991 after 18 years and that this action is after grossly unreasonable time and it must be set aside.

3. The authority has considered this aspect and observed that the revenue entry came to be made on 21st March 1976. Thus, at that time also, it was recorded that the sale is in breach of the provisions of Prevention of Fragmentation and Consolidation of Holdings

Act and, therefore, action should be taken. This entry is at page 33. The authority considered that this was sufficient explanation for delay because by this entry, the purchaser is put to the notice that there is breach of provisions of the Act.

4. However, from 1976 to 1981, there has been total inaction on the part of the authority inspite of the authority being fully aware of the breach. There is no explanation for this delay. Hence, the impugned orders are required to be quashed on the ground that the action has been started after grossly unreasonable delay of 15 years even after the breach is known to the authorities. The breach is noticed and recorded on 21st March 1976 and the show cause notice is issued on 20th February 1991. On this short ground, this petition is required to be allowed and the impugned orders are required to be set aside.

5. In the result, the petition succeeds and rule is made absolute by quashing and setting aside the impugned orders at annexures K and N passed by the Assistant Collector and the Government respectively.

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mhs/-